

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL CISNEROS and U.S POSTAL SERVICE,
POST OFFICE, Oakland CA

*Docket No. 02-2243; Submitted on the Record;
Issued February 7, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The only decision before the Board on this appeal is the Office's June 7, 2002 decision denying appellant's request for a review on the merits of its October 4, 2000 and March 16, 2001 decisions. Because more than one year has elapsed between the issuance of the Office's October 4, 2000 and March 16, 2001 decisions and September 13, 2002, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review those decisions.¹

On August 26, 1999 appellant, then a 46-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained an emotional condition in the performance of his federal duties.

In decisions dated October 4, 2000 and March 16, 2001, the Office denied appellant's claim finding that the employment factors appellant alleged to have caused his medical condition did not arise in the performance of his federal duties.

In an October 14, 2001 letter, appellant requested reconsideration. In his letter appellant argued that the Office's March 16, 2001 decision was too vague for him to respond to, that the Office failed to consider all his allegations and that refusal to pay overtime was clearly an action related to his employment.

In support of his request, appellant submitted medical reports and progress notes from Dr. Stephen Heckman, clinical psychologist.

¹ See 20 C.F.R. § 501.3(d)(2).

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁵

The Board has held that the submission of evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷ While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁸

In the present case, appellant has not established that the Office abused its discretion in its decision by denying his request for a review on the merits of its October 4, 2000 and March 16, 2001 decisions under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

In support of his reconsideration request, appellant argued that the Office never fully considered his arguments because the Office did not refute each of his 22 allegations points. However, the March 16, 2001 decision did find that none of appellant's allegations were in the performance of duty or demonstrated error or abuse.

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. §§ 10.606(b)(2).

⁴ 20 C.F.R. § 10.607(a).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁸ *John F. Critz*, 44 ECAB 788, 794 (1993).

Appellant also argued that refusal to pay overtime was in the performance of duty; an argument he raised previously and which therefore was repetitious.

Dr. Heckman's medical reports are not relevant until appellant has established an employment factor arising in the performance of his federal duties.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The June 7, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member